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UNCLAS SECTION 01 OF 02 MADRID 004299

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DEPT FOR EB/IPC WILSON, DEPT PLEASE PASS TO USTR BPECK, DOC
JBOGER, USPTO JURBAN/MSMITH, DOJ KDORSHOW, DHS RBAE

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [SP](#)

SUBJECT: SPECIAL 301 MID-TERM REVIEW WITH COPYRIGHT
INDUSTRIES

REF: MADRID 00736

1. This is an action cable. See para. 6.1.

2. Summary: Spanish copyright industry representatives said at a 10/29/04 DCM-hosted lunch that it was too soon to tell where the Zapatero government was going with respect to IP protection. The majority said they had no view at this time whether Spain should be put on the Special 301 list next year. The Business Software Alliance (BSA) representative said, however, that the U.S. should strongly consider putting Spain on the list because IP internet protection was very weak, i.e. internet providers (principally Telefonica) were not being made sufficiently responsible for protecting content from unauthorized downloading. The participants agreed Spanish Customs should crack down on imports of blank CDs; that the GOS needed to make a combined public effort with internet providers and content companies to deal with internet piracy along the lines of a recent French government initiative; and, that Spain needed to pass implementing legislation for the internet treaties soon. End Summary

3. The DCM-hosted lunch included Asociacion Fonografica y Videografica President Antonio Guisasolo, Pedro Farre Lopez (SGAE), Federacion para la Proteccion de la Propiedad Intelectual de la Obra Audiovisual (FAP) Legal Coordinator Salvador Esteban, Business Software Alliance Director of Institutional Relations Carlos Manuel Fernandez, and FEDICINE Secretary General Estela Artacho. EconCouns, Trade Policy

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Officer, and Econ FSN also participated.

PROBLEMS IDENTIFIED

4. Participants agreed that Spanish police continued to conduct an impressive number of raids against IPR pirates, and that local police forces especially in Madrid, Catalonia, and the Basque region were becoming particularly active in this regard. The new penal code establishing stiffer penalties entered into force on October 1, 2004 so industry needed to wait to see what effect the new code would have. All five IP representatives complained about the lack of IPR knowledge among judges and a sense among many members of the judiciary that IPR offenses were trivial. They said they did not see a big shift in policy with the Zapatero government. However, the SGAE representative said that he thought the new government would probably be reluctant to engage forcefully in this area because the "social cost" would be too high, meaning the political cost incurred by cracking down further on the largely immigrant "manteros" (street pirates), and the growing generation of younger people who believed downloading movies and music and the internet for free was appropriate.

5. Although street piracy remains a problem, internet piracy is fast becoming a more significant issue. Although Spain has signed the WIPO internet treaties, it has not passed implementing legislation because the EU Copyright Directive (this Directive provides the legal framework for implementing the WIPO internet treaties) has not been implemented yet. According to a Ministry of Culture contact, the Ministry is poised to send to parliament implementing legislation, but he would not say when this would happen. The BSA representative complained that the "killer applications" sold by Telefonica (by far and away the most important internet provider in Spain) allowed subscribers to download movies and music from the internet with ease. He claimed that although Telefonica recently, for instance, started offering Apple's iTunes music for fee service, it remained unreceptive to discussions on how to prevent unauthorized downloading from the internet. Separately, a Spanish lawyer told EconOff that the fundamental problem was that without appropriate implementing legislation, peer to peer operation cannot be effectively prosecuted.

WHAT CAN BE DONE?

6. There was consensus on the desirability of working on the following issues.

1) Get Spanish Customs to track and in certain cases prevent the unauthorized importation of blank CDs. Embassy in coordination with industry will encourage the GOS to do so. Embassy requests information from Customs and Border Protection (CPB) regarding whether it has experiences that might be worth sharing in this regard with Spanish Customs. Such information sharing/training could conceivably be done in partnership under the auspices of the USG's recently announced Strategy Targeting Organized Piracy.

2. Encourage GOS Ministries of Finance, Commerce, Justice, and Interior to announce together with internet service providers and content providers a commitment and strategy to prevent unauthorized downloading from the internet. The copyright industry representatives agreed that the French initiative in this regard announced last July was a "model".

3. Stress the importance to the GOS of passing implementing legislation for the internet treaties.

4. Do more to train and sensitize Spanish judges to the importance of IPR. Embassy will explore what can be done additionally in terms of speakers and IVs. In July this year, through the Joint Visitor Program (JVP): "U.S.-Spanish Judicial Cooperation", the Embassy nominated and sent two Barcelona-based judges to the U.S. for exposure to the American IPR system. Our understanding is that the judges had a successful trip to the U.S. Unlike in some other countries, many Spanish judges are receptive to participating in U.S. exchange programs so we will work to identify other judges we might potentially nominate for similar trips.

5. Encourage the GOS to launch a public campaign on the importance of respecting intellectual property. All copyright industry representatives said this was important because such campaigns have until now largely been conducted by industry.

ARGYROS